

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, STATE OF CALIFORNIA, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, STATE OF FLORIDA, STATE OF GEORGIA, STATE OF HAWAII, STATE OF ILLINOIS, STATE OF INDIANA, STATE OF IOWA, STATE OF LOUISIANA, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF MONTANA, STATE OF NEVADA, STATE OF NEW HAMPSHIRE, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF NORTH CAROLINA, STATE OF OKLAHOMA, STATE OF RHODE ISLAND, STATE OF TENNESSEE, STATE OF TEXAS, COMMONWEALTH OF VIRGINIA, STATE OF WASHINGTON, ex rel. LENA STURGEON, ANTHONY FERRANTE ANTHONY SCIOLE AND NATHAN NILES,	:	CIVIL ACTION NO.: 15-6829
VS.	:	
PHARMERICA Corporation	:	

**MOTION FOR RELIEF UNDER FEDERAL
RULE OF CIVIL PROCEDURE 60**

1. On December 28, 2015, relators Lena Sturgeon, Anthony Ferrante, Anthony Sciole, and Nathan Niles (collectively “Relators”) initiated an action on behalf of the United States of America (“U.S. Government”) and various named states against PharMerica Corporation under the False Claims Act, 31 U.S.C. § 3729, *et seq.* (“FCA”) and various State law corollaries to the FCA.

2. On October 30, 2018, Duane Morris LLP (“Duane Morris”) notified Relators of the U.S. Government’s decision to decline to intervene in the *qui tam* action and that it is Duane Morris’s “policy not to pursue false claims cases following a declination” by the Government.

3. Following this correspondence, Relators commenced searching for replacement counsel in the *qui tam* action with the assistance of Dilworth Paxson LLP (“Dilworth”).

4. On December 6, 2018, before Relators had located replacement counsel, Duane Morris filed a Notice of Voluntary Dismissal Without Prejudice under Fed. R. Civ. P. 41(a)(1)(A)(i) and the FCA, 31 U.S.C. § 3730(b)(1) (ECF No. 21) [hereinafter, “Notice of Voluntary Dismissal”].

5. This Notice of Voluntary Dismissal was filed without Relators’ prior knowledge or consent. *See* Declarations of Relators Sturgeon, Sciole, Ferrante and Niles, dated 1/11/2019, at ¶¶ 4-6, filed simultaneously herewith [hereinafter, the “Declarations”].

6. The U.S. Government filed a Notice of Consent to Dismissal on behalf of itself and the named States, and submitted a proposed order for this Court’s consideration dismissing the *qui tam* action under 31 U.S.C. § 3730(b)(1) (ECF No. 22). The Court entered this Order on December 7, 2018 (ECF No. 23) [hereinafter “Dismissal Order”].

7. On January 3, 2019, Dilworth discovered that the *qui tam* action had been dismissed and immediately notified the U.S. Government and Duane Morris that the case had been dismissed without Relators’ consent.

8. Relators respectfully request under Fed. R. Civ. P. 60(b)(1) and (6) that the Court vacate Relators’ Notice of Voluntary Dismissal and the related Dismissal Order, reinstating the *qui tam* claims raised in this action.

9. “A motion for relief under Rule 60(b) is directed to the sound discretion of the Court.” *Scott v. U.S. E.P.A.*, 185 F.R.D. 202, 206 (E.D. Pa. 1999). In addition, “a voluntary dismissal under Rule 41 is a final judgment, order or proceeding within the ambit of Rule 60”. *Scott*, 185 F.R.D. at 205.

10. Fed. R. Civ. P. 60(b)(1) and (6) provides this Court discretion to “relieve a party or its legal representative from a final judgment, order, or proceeding for ... (1) mistake, inadvertence, surprise, or excusable neglect;... or (6) any other reason that justifies relief.” As in *Scott*, 185 F.R.D. at 205, this Court should not allow Relators to be prejudiced by a miscommunication or mistake of counsel acting without authorization.

11. Relators did not consent to Duane Morris filing the Notice of Voluntary Dismissal on their behalf. This miscommunication between Duane Morris and Relators led to a mistake that can only be corrected through the relief requested herein under Rule 60(b)(1) and (6).

12. In the interest of justice and to preserve all rights in this *qui tam* action, Relators request that the *qui tam* action be reinstated and that Relators be granted an opportunity to locate replacement counsel.

13. To this end, Relators request an Order vacating (1) the Notice of Voluntary Dismissal filed on their behalf; and (2) the Court’s Order consenting to this Voluntary Dismissal.

14. On January 14, 2019, the U.S. Government advised that it does not intend to file an opposition to this Motion.

15. Relators anticipate that they will be in a position to select replacement counsel in short order and will provide this Court an update by February 1, 2019.

Respectfully Submitted,

DILWORTH PAXSON LLP

Dated: January 14, 2019

By: /s/ Catherine Pratsinakis
Catherine Pratsinakis, Esq.
(PA ID No. 88086)
DILWORTH PAXSON LLP
1500 Market Street, Suite 3500E
Philadelphia, PA 19102
Telephone: (215) 575-7000
Facsimile: (215) 575-7200
cpratsinakis@dilworthlaw.com

Counsel for Relators